

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL C. ALBERTY, JACQUELINE)	
ALBERTY, JOHN M. ALBERTY, a)	
minor child, ANASTASIA M. ALBERTY,)	
a minor child, and GABRIELLE M.)	
ALBERTY, a minor child,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 05-1319
)	Judge Joy Flowers Conti
NATIONWIDE MUTUAL)	Magistrate Judge Lisa Pupo Lenihan
INSURANCE COMPANY,)	
)	
Defendant.)	

Plaintiff's Complaint was filed in the Court of Common Pleas of Washington County, Pennsylvania in August, 2005, and this action was removed to this Court by Defendant in September. It was subsequently referred to United States Magistrate Judge Lisa Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On September 26, 2005, Defendant filed its Motion to Dismiss and Strike the Complaint. On October 5, 2005, Plaintiffs filed their Motion to Remand, which pleading consisted of 11 pages, including legal argument, but was which was not accompanied by a Brief in Support. At Plaintiffs' request, their response to the Motion to Dismiss was stayed pending this Court's consideration of the appropriateness of remand.

On October 25, 2005, Magistrate Judge Lenihan issued the Report and Recommendation on Plaintiffs' Motion to Remand. Service was made on all parties and objections were due - as clearly provided in that document - on or before November 8, 2005. Magistrate Lenihan recommended that Plaintiffs' request for remand be denied.

The following day, October 26, 2005, Plaintiffs' filed a pleading captioned "Brief in Support of Motion to Remand." On November 10, 2005, Defendant filed its Motion to Strike that pleading as untimely. Most recently, on November 14, 2005, Plaintiffs filed a sixty-one (61) page "Supplemental Brief".

This Court has now reviewed the pleadings and documents in the case, together with the Report and Recommendation. Although no proper Objections were filed by Plaintiffs, it has nonetheless considered Plaintiffs' "Brief in Support" and "Supplemental Brief" in reaching its decision.

The Court must note that Plaintiffs' filings reflect continued serious misunderstandings of the applicable law and precedent; for example, Plaintiffs (1) conflate "diversity" with the requirements for "minimum contacts" jurisdiction over non-resident corporate defendants; (2) continue to misunderstand the import of cases interpreting § 1332(c); (3) significantly reiterate, in their lengthy recent filing, the misguided case summaries, including extensive excerpts, included in prior pleadings; (4) devote significant time and space to asserting the inappropriateness of aggregating claims to satisfy jurisdictional requirements when the Report and Recommendation makes clear that it did not evaluate the claims on an aggregated

basis; and (5) expound at length on the impossibility of predicting the outcome of their punitive damages claims as a reason for excluding such claims from consideration when the law is clear that all potentially recoverable (*i.e.*, non-frivolous) punitive claims are to be included.

Finally, the Court notes that Plaintiffs have failed to heed the Report and Recommendation's caution that the "inclusion of entirely inapposite analysis and other extraneous materials in Plaintiffs' filings will burden the Court's time as the litigation proceeds" and its request that Mr. Alberty be mindful of this should he elect to continue to represent himself and the other plaintiffs. It again recommends that Plaintiffs weigh the risk of obfuscating the potential merits of their case by their obviously limited expertise in the necessary procedural and substantive areas. In future, Plaintiffs will be expected to adhere to all applicable Rules, including the Federal Rules of Civil Procedure, the Rules of the Western District of Pennsylvania, and those of these Chambers.

That said, the following Order is entered:

AND NOW, this 29th day of November, 2005:

IT IS HEREBY ORDERED that Plaintiffs' Motion for Remand be denied. The Report and Recommendation of Magistrate Judge Lenihan is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion to Strike Plaintiffs' October 26, 2005 "Brief in Support" be denied as moot.

IT IS FURTHER ORDERED that Plaintiff s are granted twenty (20) days from the date the entry of this order to file their Response to Defendant's Motion to Dismiss and Strike Complaint.

/s/ Joy Flowers Conti
Hon. Joy Flowers Conti
United States District Judge

Dated: November 29, 2005

cc:

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